



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/10598/2017

THE IMMIGRATION ACTS

Heard at Field House
On 12 July 2018

Decision & Reasons Promulgated
On 02 August 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR H M
(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Ms K Pal, Home Office Presenting Officer

For the Respondent: Ms M Gherman, Counsel, instructed by Virgo Solicitors

DECISION AND REASONS

1. The Respondent, to whom I shall refer as the Claimant, is a national of Iraq from the IKR born on 5 January 2000. He arrived in the United Kingdom in February 2017 and claimed asylum on 5 April 2017. The basis of his claim was that he feared being harmed by ISIS and Shia militias if returned to Iraq due to his father's previous involvement with the Ba'ath Party. His claim was rejected by the Respondent in a decision dated 4 October 2017 and he appealed against that decision to the First-tier Tribunal.

2. His appeal came before First-tier Tribunal Judge Davidson for hearing on 20 November 2017. In a Decision and Reasons promulgated on 18 December 2017, the judge allowed the appeal on the basis that, although she found that the Claimant had failed to show he faced a real risk of persecution on his return to Iraq on the basis of his imputed political opinion, she did find that Article 15(c) was engaged on the basis that she accepted at [30] as follows:

“However, I find that the fact that the Appellant does not have a CSID document and appears to have no likely way of securing such a document means that he would be at risk of destitution if returned to Iraq since that document is required for day-to-day living in Iraq, according to country guidance. I accept the Appellant’s evidence that he would not be able to obtain a CSID document from the Iraqi Embassy or on return to Iraq, whether to the Kurdistan region or elsewhere.”

3. The Secretary of State sought permission to appeal, in time, on the basis that the judge had failed to give adequate reasons and failed to resolve the conflict of fact, that conflict being that, despite having evidence that by returning directly to the IKR the Claimant’s identity would be pre-cleared by the Kurdish authorities whilst still in the UK, the judge did not engage with this issue in finding that the Claimant would not be able to obtain a CSID.
4. Permission to appeal was granted by First-tier Tribunal Judge Hollingworth in a decision dated 1 May 2018 where he found that it was arguable that the judge had set out an insufficient analysis at [30] of the decision in the context of obtaining a CSID document and it was arguable that the judge could have reached a different conclusion if he had set out a more extensive analysis of the arguments put forward on behalf of the Secretary of State.

Hearing on 28 June 2018

5. The appeal came before me for hearing firstly on 28 June 2018 when Mr Avery on behalf of the Secretary of State submitted that the judge had not correctly applied the country guidance decision of AA (Article 15(c) Iraq) [2015] UKUT 00544 (IAC) (as amended by the Court of Appeal judgment [2017] EWCA Civ 944. Mr Avery contended that there was no requirement and no evidence that CSIDs were even used in the IKR and even if the judge was correct about the CSID there was no basis upon which he could find that the Appellant could not secure one.
6. On behalf of the Claimant Ms Gherman submitted that the judge had clearly accepted the evidence, which was set out at [10] of the decision, i.e. that the Claimant had had a CSID but had left it in Iraq. He does not know where his parents are and has submitted a Red Cross tracing request and he cannot go back to the IKR as there is nobody there to help him, the family having relocated to Kirkuk in 2014 and the Claimant not having had contact with them since he fled from Kirkuk in October 2016 when it was attacked by ISIS.
7. She submitted that the judge had not misapplied the country guidance decision in AA (Iraq) (op cit) and that if the Court of Appeal had wished to make a distinction in

respect of the CSID between Iraq and the IKR, then it would have been simple to do so. She contended that a CSID was required for everyone. Mr Avery was unable to provide a jurisprudential basis for his assertion that CSIDs were not required in the IKR but submitted it was obvious because the Iraqi authorities do not run IKR, there were different authorities there.

8. Ms Gherman submitted according to the Home Office Country Policy Information Note and AA (*Iraq*) that the Claimant needs to produce a CSID in order to obtain a laissez-passer *cf.* [170] of AA (*Iraq*). It is critical to determine whether a Claimant can acquire or re-acquire civil documentation: see [177] of AA (*Iraq*). She submitted that the judge had considered each of these avenues and correctly concluded that the Claimant would not be able to obtain a CSID. She submitted that the findings were open to the judge to make. The Claimant's credibility was not in issue, the Secretary of State accepting in the refusal decision that the Claimant had a genuine subjective fear on return and was a child and the judge accepted the Claimant's credibility in respect of his account of documentation. She submitted according to paragraph 2.4.9 of the CPIN that the Secretary of State's own position that a failure to re-acquire a CSID leads to a grant of humanitarian protection.
9. The parties informed me that the new country guidance decision in respect of the IKR was imminent. I therefore decided that if it were handed down before I had completed writing up the decision that I would relist the hearing for submissions specifically on the impact, if any, of the new country guidance case. In fact, the country guidance decision in AAH (Iraqi Kurds – internal relocation) Iraq CG UKUT 00212 (IAC) was handed down later the same day, after the parties had left court unfortunately. I therefore issued Directions on 28 June 2018 for the hearing to be resumed before me on the first available date.

Resumed hearing on 12 July 2018

10. The resumed hearing came before me on 12 July 2018. Ms Pal appeared on behalf of the Secretary of State on that occasion. I summarised my Record of Proceedings from the previous hearing of the submissions made by Mr Avery and Ms Gherman. Both parties confirmed that they had read the judgment in AAH (Iraqi Kurds – internal relocation) Iraq CG UKUT 00212 (IAC).
11. Ms Pal submitted that there was the potential for the Claimant to obtain a CSID from the Iraqi Embassy in London and the judge had just made a blanket finding on this. She submitted that there was a lack of findings as to whether the judge accepted as credible that the Claimant does not have contact with his family. Specifically in respect of the country guidance decision AAH (Iraqi Kurds - internal relocation) Iraq (CG) [2018] UKUT 00212 (IAC) it was the Home Office's position that there are now again returns to the IKR from cities in Europe to Erbil and Sulaymaniyah, albeit at the time of the hearing in AAH at the end of February 2018 there were no flights. She accepted, however, that she had no documentary evidence to support this contention and that the Home Office country information had not yet been updated.

12. In her submissions, Ms Gherman submitted that *AAH* definitively found that flights would go to Baghdad, at section E, subparagraph 2, and if the Home Office wished to change their position and ask that country guidance be departed from then weighty evidence was required in accordance with the Practice Direction and the case law. She submitted that the Home Office have provided no evidence at all. Thus it was necessary to follow country guidance decision.
13. Ms Gherman submitted that at [10] of the decision, the judge set out the Claimant's evidence as to documentation, which had not been challenged by the Secretary of State. Whilst it is the case that the judge did not subject that evidence to analysis, given that it was unchallenged it is clear that it was simply accepted both by the Secretary of State and by the Judge. She submitted that just because the judge's findings were succinct does not mean that they are wrong and they were sufficient findings. Ms Gherman submitted that it was clear from [50], [59], [62] and [93] that a CSID is required in the IKR in order to find and obtain employment, accommodation, whether by private landlord or in a hotel, and that there was a duty on those agencies to keep the security services informed as to who was either working or staying with them.
14. She submitted that *AAH* demonstrates that it is even more difficult now to return an individual to Iraq without documentation. It was clear from the judgment that everyone has to go via Baghdad in order to then travel on to the IKR and that this would put individuals at risk in particular. It is not possible to board a domestic flight between Baghdad and the IKR without a CSID or a valid passport at subparagraph 4, and subparagraph 5, there would be considerable difficulty in making the journey between Baghdad and the IKR by land without a CSID or passport due to the numerous checkpoints and the real risk of detention until identity could be verified by the security personnel and the inability of somebody to verify their identity makes it unreasonable to require them to undertake such a journey. Verification would normally require the attendance of a male family member and identity documentation.
15. Ms Gherman drew attention to the fact that in relation to attempting to obtain a CSID in the UK it was clear from [26] of *AAH* and the evidence of Dr Fatah, which had been accepted, that one needs not only a CSID but also to fill out a form which has to be countersigned by the head of the family and any previous documents, i.e. an Iraqi passport, to be produced. It is a complicated procedure and not one that is open to this Claimant. She submitted essentially he was not returnable due to the lack of documentation. Ms Gherman also sought to rely on [43] and [58] of *AAH* as to the risks specific to young men who are seen as particularly suspicious due to potential links with ISIS and were at risk of detention. She submitted that the Claimant's life would be literally impossible if he were to be returned to the IKR.
16. I found no error of law in the decision of the First-tier Tribunal Judge. I now give my reasons.

Findings

17. Due to the fact that the Claimant was a minor aged 17 on his arrival, the Claimant's claim was therefore processed on the basis that he was a minor and whilst the

substantive asylum claim was not accepted, it was found that he was from a contested area, that he was of Kurdish ethnicity and that he had a genuine subjective fear on return to Iraq. The Secretary of State's position was that due to changes in the country and because the Claimant originated from the KRI, it would not be unreasonable to expect him to return to Erbil.

18. Thus the issue for determination by the First-tier Tribunal was somewhat narrow. In terms of the issue of documentation the Claimant's evidence recorded by the judge at [10] is as follows:

"The Appellant had an Iraqi Civil Status Identity Card (CSID) when he lived in Iraq but he never used it and no longer has it because he left it behind when he left Iraq. He is unable to find his entry in the family book because he does not know the volume and page number and does not know where his parents are. He is waiting to hear back from the Red Cross, who are trying to locate them. He does not know where his extended family are. He cannot go back to Kurdistan as there is nobody there to help him if he goes back."

19. The Secretary of State's position at the hearing is recorded at [16], which is that the Claimant had a CSID in the past and would be able to get it again, for example by accessing hospital records, since he would not have received treatment without the document or by giving certain information to the Iraqi Embassy.
20. The judge also records the Claimant's case at [23] that there is extensive country information about the CSID and although the Claimant would be returned to Erbil, for which he would not need a passport, he would then not be able to obtain a CSID within a reasonable time and would face destitution, and at [24] that the CSID is required in order to live in Iraq. It is not granted automatically. He would need either a passport, family book reference or someone to vouch for him and he has none of these and that a person in Iraq without a CSID requires humanitarian protection. The Home Office guidance is that a person who is unable to replace their CSID or obtain support from their family is likely to face significant difficulties in accessing services and humanitarian protection would be appropriate in these circumstances. In respect of the Secretary of State's contention that the Claimant could approach the hospital who treated him for a broken leg, the Claimant does not know which hospital that was or what date he was admitted or even if the hospital still exists.
21. The judge, in findings which are admittedly succinct, clearly accepted the evidence of the Claimant, which, as earlier stated, was not challenged by the Secretary of State. Therefore it was accepted the Claimant does not currently have a CSID document and does not have a likely way of securing such a document. It follows that it was open to the judge to find that the Claimant will be at risk of destitution if returned to Iraq since it is required for day-to-day living and the judge expressly accepted the Iraqi Embassy or on return to Iraq, whether to the Kurdistan region or elsewhere.
22. Whilst the Tribunal now has the benefit of the new country guidance decision in AAH (Iraqi Kurds - internal relocation) Iraq (CG) [2018] UKUT 00212 (IAC) this in fact merely fortifies the findings by the judge by virtue of the fact that the current position is that it is not even possible to return directly to the IKR and that all returns would be

to Baghdad. In the absence of a CSID it is simply not reasonable or possible for the Claimant to travel on from Baghdad to the IKR. Thus I find there was no material error of law by the judge in finding that the Claimant's appeal should be allowed on the grounds of humanitarian protection.

Notice of Decision

The appeal by the Secretary of State is dismissed, with the effect that the decision by First tier Tribunal Judge Davidson allowing the appeal is upheld.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Claimant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies to both parties. Failure to comply with this direction could lead to contempt of court proceedings.

Signed *Rebecca Chapman*

Date 29 July 2018

Deputy Upper Tribunal Judge Chapman